IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 3609 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE POLICE HOUSING CORPORATION - Applicant(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
Mr K.S. Nanavati, sr.advocate with Mr Prabhav Mehta for NANAVATI ASSOCIATES for Applicant(s) : 1,
Mr Sunit S Shah, PUBLIC PROSECUTOR for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 25/04/2007

ORAL JUDGMENT

1. The petitioner, Gujarat State Police Housing Corporation, posing as original accused No.1, has approached this Court under the provisions of section

482 of the Code of Criminal Procedure, 1973 (for short, "the Code") with the prayers as under:

> "8 (A) Your Lordships may be pleased to allow this petition and be further pleased to quash and set aside the FIR dated 19.6.97 registered as FIR No.362/97 with the Rajkot Taluka Police Station, Rajkot; and be further pleased to stay and prohibit the investigation pursuant thereto;
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> (B) Pending the hearing and final disposal of this petition, Your Lordships may be pleased to stay further investigation in respect of FIR dated 19.6.97 registered as FIR No.362/97 with Rajkot Taluka Police Station, Rajkot;
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> (C) An ex-parte ad-interim relief in terms of prayer (B) may kindly be granted; and
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> (D) Pass such other and further order or orders as may be thought fit in the interest of justice."

2. The factual backdrop, in brief, is that the petitioner-Company was engaged in the activity of construction of residential quarters and had awarded

a contract for construction on 9.5.96. While the construction work of different blocks of the project meant for housing of police personnel was going on, at about 1.30 p.m. on 3.6.1997, Block No.C-4 accidentally collapsed. The Superintending Engineer of the company rushed to the spot and appointed private engineers and architects to investigate and enquire into the cause of accident. They found, on *prima facie* observation, that on account of heavy rain on 1.6.1997 causing percolation of rain water, the accident could have happened. However, the petitioner appointed the Quality Control Department of the State of Gujarat to investigate into the said accident and to furnish a detailed report. On the other hand, DSP, Rajkot (Rural) informed the Police Commissioner about initiating a parallel enquiry by police and after 15 days of the accident, an FIR was lodged by Police Sub Inspector against the petitioner-company and its officers, contractors, structural designers and the officers of the Gujarat Engineering and Research Institute under the provisions of section 308 read with section 34 of Indian Penal Code, 1860.

2.1. By filing affidavits-in-reply, Mr J.J. Jadeja, Police Inspector, Rajkot City Traffic Police has stated that, as mentioned in the affidavit of Mr C.H. Gajjar, police had powers to investigate into the matters when a cognizable offence was committed and, therefore, the police has not misused their powers. The interim report submitted in May, 1998 by the Experts' Team of L.D. Engineering College clearly revealed that, on testing various material samples from the collapsed building, it was discovered that the bricks used for the purpose of construction of building was of poor quality than required, and the mortar samples collected from different bricks revealed that the overall cement content of the block was lower than required. The analysis report of the mortar samples revealed that, in certain samples, cement and sand ratio was as low as 1:30 indicating that cement content was very much less than required. The final reports dated 22.12.1998 of Experts' Team of L.D. Engineering College stated that, The materials, especially bricks and mortar used in all existing buildings have less factor of safety and

cannot be considered safe in the engineering sense of the word as the margin of safety was compromised in respect of all of them. It is also stated on oath that there was no rainfall in the city of Rajkot on 1.6.1997 or on 2.6.1997. On 3.6.1997 only 0.3 mm rainfall was recorded and the total rainfall till 4.6.1997 in the city of Rajkot was only 3 mm. That information was confirmed by the office of Rajkot District Collectorate by its letter dated 10.6.1997.

2.2. It is further stated by Mr Jadeja that, on 16.10.2000 this court had granted conditional permission against the interim stay and on the strength of that conditional permission, further investigation was undertaken. He has further stated that the contract for construction of five blocks of 'C' category at Mavdi was entrusted to the contractor by the Corporation for a sum of Rs. 1,09,20,566-06. According to clause 26 of the terms and conditions of the contract, the engineer in charge or the staff on duty was under an obligation that if the contractor did not carry out the work properly or if the material utilised for construction

was of inferior quality or was not according to specifications and if the quality of construction was weak, such poor quality work would be removed. It is stated, in substance, that the bricks which were required to be not approved were utilised by the contractor in the construction and by allowing the contractor to utilise the bricks of the smaller size, the engineer has caused great financial benefit to the contractor and thus committed cheating and breach of trust with the Government. It is also alleged in the affidavit that there were pre-determined arrangements between the contractor and the engineer on duty and they had colluded with each other. The deponent, Mr Jadeja, had received a letter dated 3.1.2001 from the Corporation along with the report of Chief Engineer and Additional Secretary, Roads and Building Department wherein it was stated that; "in the bricks of the collapsed building, the mortar is not found on most of the bricks, and accordingly, on account of having no bond of mortar with bricks, the construction was weak and there is possibility that on this account, the construction had collapsed." It is stated by him

that, from the evidence collected during investigation till filing of the affidavit, it was found that the contractor and the engineer in charge of the work had colluded with each other from the beginning and with a view to get wrongful financial gain to the contractor, the engineers had allowed to utilise goods/material of lower/inferior/weaker specifications, and thereby committed offence of cheating and breach of trust and, during the course of construction, the engineers had misused their power and position and thereby caused huge financial gain to the contractor and loss to the Government. Therefore, it was a case of offence under sections 308 read with section 34 of IPC along with offences under sections 406, 409, 420 and 120B of IPC and a report was also submitted to the learned JMFC, Rajkot. Besides that, the offence under section 13 (1)(d)(2) and (2) of the Prevention of Corruption Act, 1988 were also sought to be added by making report to the learned JMFC, Rajkot, who had also granted such written permission to add those sections.

3. It was seen from the record of the proceedings of the present petition that, on the first date of hearing on 4.7.1997, the petition was admitted and interim relief in terms of para 8 (B) as quoted hereinabove was granted. Thereafter, the petition was firstly listed straightaway in the year 2000 since when the hearing was adjourned from time to time, mostly at the instance of the petitioner or simply due to non-attendance on their part. In the meantime, on 16.10.2000, an order was made i*nter-alia,* in the following terms:

> ".....It appears from the record that there are as many as four accused persons and the petitioner Corporation is one of them. This petition has been filed only by the present petitioner-Corporation and the remaining accused persons have not filed any petition. Therefore, the stay has to be restricted qua the petitioner and the investigation should proceed with respect to the remaining accused. Therefore, the interim relief granted earlier is modified to the extent that the interim relief stands qua the petitioner, meaning thereby that the further investigation in the offence in question can be carried out with respect to the remaining accused persons and the stay against

> the investigation will operate only qua the petitioner. At the instance of learned APP, it is directed that the officers of the petitioner corporation shall cooperate in the investigation in the matter and the learned Advocate for the petitioner Mr K.S. Nanavati states that the officers of the petitioner Corporation will cooperate in the matter of investigation against the remaining accused persons. ....."

Thereafter on 6.3.2007, after pendency of the petition for a whole decade, it was sought to be unconditionally withdrawn. While learned APP stated that even as serious offences were revealed during investigation, the latest instruction was to the effect that report of investigation was filed in the trial court pursuant to the FIR dated 19.6.1997 and all those papers were required to be perused to examine whether the process of this court was grossly abused in the present proceedings and whether the offences were properly investigated and report thereof was properly submitted before the court. Therefore, the petition was not permitted to be withdrawn. The learned APP was directed to call for the entire record of investigation pursuant to the

aforesaid FIR and apprise the court about further proceedings in the court pursuant to the investigation report, if any, was submitted in the court.

3.1. Pursuant to the above order dated 14.3.2007, the petition was heard when the learned APP submitted that investigation report in the form of 'C' Summary was submitted in the trial court way back in the year 2003. Upon perusal of that report, it was revealed that even as investigation was carried on after the interim orders in the present proceedings and even as detailed affidavit dated 15.1.2001 of Police Inspector Mr J.J. Jadeja was filed, the so-called 'C' Summary was submitted in the trial court at the instance of and under some direction from the Joint Secretary, Home Department of the State Government. Such instructions were contained in letter dated 7.5.2001, and therefore, the learned APP was directed to file affidavit of the officer of the level of Joint Secretary of the Home Department to explain the reasons and circumstances as also the legal provisions authorising the

authority concerned to issue such direction and place on record copy of the investigation report filed in the trial court. It was also directed that the learned JMFC, Rajkot, before whom the aforesaid investigation report in the form of Final Report No.112/03 dated 4.7.2003 was submitted, shall not make any order thereon during the pendency of the petition.

3.2. Pursuant to the above order, an affidavit-in-reply of Mr. A.D. Chavda, Under Secretary and holding additional charge of Dy. Secretary in the Home Department, was submitted today to *inter-alia*, state that the Additional Chief Secretary (Home) had received a letter dated 4.1.2001 from Shri Khandwawala, the then Managing Director, Gujarat State Police Housing Corporation, requesting that when the entire issue which was dependent upon receipt of Final Report of Quality Control Department was now over and the report was received and accepted by the Government and follow-up action having been taken, there remained no ground for continuing of parallel police investigation in "this technical

matter". He had also requested that, due to investigation by the police, it affected badly the image of the Corporation. It was requested by him that the case may now be decided as 'C' Summary and if the petitioner corporation was taken as an interested party, then the investigation may be handed over to State C.I.D. (Crime). As stated in the affidavit, "considering all aspects of this matter, highest authority of the State has taken decision to file 'C' summary report in the trial court." Instructions to that effect were contained in letter dated 7.5.2001 but, thereafter, the Home Department had received a letter from Additional D.G., C.I.D. (crime) that the investigation in the case was not yet over and final decision would be taken according to the merits of the case. Therefore, the State Government took further decision on 28.6.2001 to decide the case on merits. It is further stated in the affidavit that M/s. Pandya Patel & Co., under whom the construction work was done, was asked to pay Rs. 11,93,000/- because block No.C-4 of Mavdi project had collapsed and that amount was recovered by the petitioner. The petitioner

corporation has also initiated departmental action against the erring officers and punishment orders were passed against the Executive Engineer, Deputy Executive Engineer and Assistant Engineer concerned. Copy of the order is annexed with the affidavit. The investigation report which was filed by the Investigating Officer in the trial court on 04.7.2003 is also annexed with the affidavit.

3.3. According to the aforesaid investigation report, it was found during the investigation that officers of the 4 agencies namely, Gujarat State Housing Corporation, M/s. Pandya Patel & Co., the Structural Designers and Gujarat Engineering and Research Institute, were involved in the alleged offences. The further investigation was stayed under order dated 5.7.1999 of this court and after the order dated 16.10.2000 partially lifting the injunction against the investigation, further investigation was carried out which revealed that the contractor and the engineers of the petitioner corporation had colluded with each other in using materials of inferior quality and thereby committed

offence of cheating and breach of trust; and by misusing the power, benefited the contractor by committing offence punishable under section 406, 420, 409 and 120B of IPC, as also section 13(1)(d)(1) and (2) of the Prevention of Corruption Act, and the report for addition of those sections was made to the learned JMFC. While the investigation was being carried out, the contractor firm had approached the Sessions court and a direction was issued to the effect that the accused persons proposed to be arrested should be informed about the sections under which they were proposed to be arrested and not to arrest them within 5 days after such information. While the investigation subject to the interim order of this court and the aforesaid order of the Sessions Court was being carried out, the Government had decided to submit the so-called 'C' Summary and instructions to dispose of the case in that manner was issued. Therefore, complying with the instruction to submit 'C' Summary, the investigation was completed and the Final Report No.112/03 dated 4.7.2003 had come to be submitted.

4. After perusal of the aforesaid latter affidavit-in-reply of the Under Secretary, it was fairly conceded by the learned Public Prosecutor that admittedly the investigation was left incomplete and acceptance or rejection of such report of investigation by the trial court would be premature and meaningless. It was submitted by learned counsel Mr Prabhav Mehta for the petitioner that, notwithstanding the submission of the report as aforesaid, the investigating agency was free to carry out further investigation and submit its report in terms of the provisions of sub-section (8) of section 173 of the Code. It was, however, obvious that, if the investigation report submitted on the basis of a truncated and aborted investigation were accepted, the question of further investigation may not arise and the alleged offences, if any were committed by any of the persons concerned, would escape the trial in absence of or due to the investigation being cut short by administrative order at the instance of the parties who might be interested in closure of the proceedings without proper investigation and trial. Learned P.P. submitted that the State Government did

not endorse such course of action and, therefore, the report submitted before the trial court is now required to be ignored and an investigation report, after full and proper investigation, may be submitted within the time limit which may be prescribed by this court.

5. Therefore, it is directed that further investigation into the aforesaid FIR No.362 of 1997 dated 19.6.1997 shall be carried out and completed by an independent and competent officer of the rank of Deputy Superintendent of Police and report thereon shall be submitted to the court in accordance with law, on or before **31.7.2007**. The petition is dismissed as not argued and not pressed on merits, interim relief is vacated and Rule is discharged with no order as to costs, subject to the aforesaid direction.

sd/-
[D. H. Waghela, J.]

msp